



The following constitutes
the order of the court. Signed October 31, 2011

Stephen L. Johnson

Stephen L. Johnson
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

JOANNA GONDA,
Debtor.

Case No. 10-58722

Chapter 13

MEMORANDUM DECISION FOLLOWING TRIAL ON CLAIM OBJECTION

Debtor Joanna Gonda filed her chapter 13 petition on August 23, 2010. On October 8, 2010, Claimant Jasvinder Nijjar filed a proof of claim in the amount of \$200,000, for damages arising out of a real estate transaction. Soon after, Joanna Gonda objected to Jasvinder Nijjar's claim (the "Claim Objection").

The court held a trial on July 27, 2011. Laurence McEvoy appeared for debtor; Amiel Wade appeared for the claimant. At the conclusion of trial, the court requested supplemental briefs on the admissibility of Jeff Purcell's deposition testimony. After reviewing the evidentiary record and the briefs submitted, the court concludes that judgment should be entered for debtor.

1 **I. FACTS¹**

2 The court makes the following findings of fact after considering the evidence and testimony
3 presented at trial:

4 A. Edgewater Executive Mortgage, Inc. (“Edgewater”) is a California corporation doing
5 business as a licensed corporate real estate broker. It does business under various related names,
6 including Executive Realty.

7 B. As required by law, Edgewater designated Debtor Joanna Gonda (“Gonda”), an
8 individually licensed real estate broker, as its designated broker of record. In addition to Gonda
9 being Edgewater’s sole designated broker, she is also its vice president and secretary.

10 C. Teresa Purcell, Gonda’s daughter-in-law, is Edgewater’s sole shareholder, president,
11 and treasurer.

12 D. Edgewater also had other licensed salespeople who operated under the corporation’s
13 brokerage license.

14 E. Jeff Purcell (“Purcell”) is Gonda’s son and Teresa Purcell’s husband. Purcell
15 sometimes gave advice to Edgewater salespeople but had no formal role or title at Edgewater.

16 F. Purcell had an individual real estate brokerage license, but he did not associate his
17 license with either Edgewater or Gonda.

18 G. Rick Mirza (“Mirza”) was Purcell’s associate or friend. He was not employed or
19 associated with Edgewater. He appears to have acted solely as an unlicensed real estate broker or
20 agent, using his own company.

21 H. In 2007, Mohinder and Shivjeet Nijjar decided to sell their real property located at
22 30971 Granger Avenue in Union City, California (“Union City Property”) to Jasvinder Nijjar,
23 Mohinder’s brother (collectively, the “Nijjars”).

24 I. Because Jasvinder Nijjar needed to borrow money to complete the purchase of the
25 Union City Property, he sought out Mirza to assist as a loan broker. Mohinder and Shivjeet Nijjar
26 had worked with Mirza previously.

27 _____
28 ¹ The following discussion constitutes the court’s findings of fact and conclusions of
law. FED. R. BANKR. P. 7052(a).

1 J. The parties agreed that (1) Jasvinder Nijjar would purchase the Union City Property
2 for \$452,000; (2) Jasvinder Nijjar would cover the closing costs and fees for both sides; and (3)
3 Mirza would receive a 0.5% commission for the transaction.

4 K. At some point, Mirza seemed to have asked Purcell to assist in the transaction.

5 L. Purcell drafted the Residential Purchase Agreement form (the "Purchase
6 Agreement") for the Nijjars' use. Purcell obtained the Purchase Agreement by printing it from an
7 Edgewater computer.

8 M. Because the form was obtained from an Edgewater computer, Gonda's name, phone
9 number, and address appear on the first page of the Purchase Agreement.

10 N. Purcell used the Purchase Agreement without Gonda's authorization.

11 O. Purcell typed in his own name as the listing and selling agent on the seventh page of
12 the Purchase Agreement. He also typed in his own name (as the "Selling Firm" and "Listing Firm"),
13 individual license number, phone number, and personal email address on the eighth page under the
14 section for Real Estate Brokers. Edgewater's name does not appear in the agreement.

15 P. Gonda was not aware of the Nijjars' transaction prior to the time the sale closed. She
16 was not personally involved in the transaction.

17 Q. At some unspecified point, the terms of the sale were altered. The purchase price was
18 increased to \$552,000, and the commission was increased to 6%. The commission was made
19 payable to Executive Realty. These revised terms were communicated to the escrow company
20 involved in the sale.

21 R. When the escrow company closed the sale, it paid the commission of \$33,120 (6% of
22 \$552,000), to "Executive Realty."

23 S. The commission was deposited into Edgewater's bank account.

24 T. Ninety percent of the commission (approximately \$29,000) was then paid to Mirza,
25 apparently under a side agreement between Mirza and Purcell.

26 U. After the close of escrow, the Nijjars discovered the discrepancy between the 0.5%
27 commission they agreed to pay and the 6% actually taken. The Nijjars never agreed to the 6%
28 commission.

1 V. The Nijjars then contacted Purcell to retrieve the improperly distributed commission
2 funds. Purcell agreed to refund the Nijjars the full commission.

3 W. On August 1, 2007, Teresa Purcell signed the first Edgewater refund check to the
4 Nijjars for \$4,552. On August 3, 2007, Jeff Purcell signed the second Edgewater refund check for
5 \$2,000. The money was paid from an account belonging to “Edgewater Executive Mortgage, Inc.”
6 and “Teresa & Jeffrey Purcell.” No other refund checks were written.

7 X. Gonda learned about the transaction between the Nijjars and the commission paid to
8 Executive Realty (and Mirza) from Purcell only after the partial refunds were paid to the Nijjars.

9 Y. In 2009, when Purcell failed to pay the remaining balance, Jasvinder Nijjar sued
10 Edgewater, Purcell, and Mirza in state court.

11 Z. On July 22, 2009, counsel for the Nijjars took Purcell’s deposition. Gonda was
12 present at this deposition but was not a defendant in the state court proceeding at the time. On April
13 22, 2010, the Nijjars added Gonda as a party defendant in the state court lawsuit.

14 AA. On October 8, 2010, Jasvinder Nijjar filed a proof of claim, asserting damages arising
15 from the Union City Property sale against Gonda in the amount of \$200,000.

16 **II. DISCUSSION**

17 A. Legal Standard for Claims Objections

18 A claim is a “right to payment.” 11 U.S.C. § 101(5)(A) (2006). The applicable substantive
19 law in determining the origin and existence of a claim is state law unless the Bankruptcy Code
20 provides otherwise. *In re Sparkman*, 703 F.2d 1097, 1099 (9th Cir. 1983). A creditor’s claim, once
21 proof of it has been filed, is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a).

22 A properly filed and executed proof of claim “constitutes prima facie evidence of the validity
23 and amount of the claim.” FED. R. BANKR. P. 3001(f). The burden then shifts to the objecting party
24 to present evidence to overcome the claimant’s prima facie case. *In re Murgillo*, 176 B.R. 524, 529
25 (9th Cir. BAP 1995). The ultimate burden of persuasion is always on the claimant. *In re Holm*, 931
26 F.2d 620, 623 (9th Cir. 1991).

1 B. Admissibility of Deposition Testimony of Jeff Purcell

2 At trial, Jasvinder Nijjar moved to admit into evidence the deposition testimony of Jeff
3 Purcell, taken on July 22, 2009, in the state court proceeding. Gonda objected to its admissibility on
4 the ground that it was hearsay. In response, Jasvinder Nijjar argued that the deposition testimony
5 was admissible as (1) a vicarious admission under Federal Rule of Evidence 801(d)(2)(D), (2)
6 former testimony under Rule 804(b)(1), (3) a statement against interest under Rule 804(b)(3), or (4)
7 a hearsay statement falling within the residual exception under Rule 807. Although Jasvinder Nijjar
8 only wishes to admit designated portions of the deposition, his brief did not specify which specific
9 statements qualify under which hearsay exception. The court will therefore decide the admissibility
10 of the deposition testimony as a whole under each proffered basis.

11 1. Hearsay Rule

12 Hearsay, an out-of-court statement offered to prove the truth of the matter asserted, is not
13 admissible at trial. FED. R. EVID. 801(c), 802. However, statements falling within an exemption
14 under Rule 801(d) or within an exception under Rules 803 and 804 may be admissible. The
15 proponent of the statements must prove by a preponderance of the evidence that an exception or
16 exemption applies. *Bourjaily v. United States*, 483 U.S. 171, 175 (1987). Here, Jasvinder Nijjar
17 seeks to admit Purcell's statements made in a deposition, outside of trial, and is offering them for
18 their truth. The deposition testimony is hearsay, so Jasvinder Nijjar must prove by a preponderance
19 of the evidence that an exemption or exception applies.

20 2. Vicarious Admission under Rule 801(d)(2)(D)

21 First, Jasvinder Nijjar argues that the deposition testimony qualifies as a non-hearsay,
22 vicarious admission. A statement by a party's agent concerning a matter within the scope of the
23 agency and made during the existence of the agency relationship is admissible when offered against
24 the party. FED. R. EVID. 801(d)(2)(D). As a preliminary matter, the party offering the statement
25 must show that an agency relationship existed between the declarant and the party, during which
26 time the statement was made. The contents of the agent's statement may be considered, but they
27 alone are insufficient to establish the necessary agency relationship. FED. R. EVID. 801(d)(2). Here,
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1 the court finds that there was no agency relationship between Purcell, the declarant, and Gonda, the
2 party in this litigation.

3 To determine whether an agency exists for purposes of Rule 801(d)(2)(D), the court must
4 “undertake a fact-based inquiry applying common law principles of agency.” *United States v.*
5 *Bonds*, 608 F.3d 495, 504 (9th Cir. 2010) (quoting *NLRB v. Friendly Cab Co.*, 512 F.3d 1090, 1096
6 (9th Cir. 2008)). Here, Jasvinder Nijjar argues that Purcell was an agent of Gonda because she was
7 the designated broker of Edgewater and Purcell was an agent of that corporation. The court finds
8 two problems with this argument. First, Jasvinder Nijjar has not proven that Purcell was an agent of
9 Edgewater under traditional agency principles. Second, an agent of a corporation is not necessarily
10 an agent of the corporation’s officers. *See Meyer v. Holley*, 537 U.S. 280, 286 (2003). The party in
11 this litigation is Gonda, not Edgewater. Jasvinder Nijjar must therefore prove that Purcell was an
12 agent of *Gonda* under traditional agency principles. He has failed to establish such a relationship.²

13 3. Declarant’s Unavailability under Rule 804 Exceptions

14 Next, Jasvinder Nijjar asserts that the deposition testimony qualifies as former testimony and
15 as statements against interest, two exceptions under Rule 804. For a hearsay statement to be
16 admissible under a Rule 804 exception, the proponent offering the statement must prove, as a
17 preliminary matter, that the declarant is unavailable as a witness. Under Rule 804(a), a declarant is
18 deemed “unavailable” in only five circumstances, including when he “is absent from the hearing and
19 the proponent of [the] statement has been unable to procure the declarant’s attendance . . . by
20 process or other reasonable means.” FED. R. EVID. 804(a)(5). Jasvinder Nijjar has failed to prove
21 that Purcell was unavailable under Rule 804(a).

22 The declarant is not considered unavailable unless the proponent of his statement makes a
23 good faith effort to obtain the declarant’s presence. *See United States v. Olafson*, 213 F.3d 435, 441
24 (9th Cir. 2000). The proponent’s effort must be reasonable. *Id.* Jasvinder Nijjar has not
25 demonstrated a reasonable effort in obtaining Purcell’s presence at trial. Jasvinder Nijjar attempted
26 to subpoena Purcell for trial at two incorrect addresses, but the subpoenas were untimely, as they

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28 ² See *infra* Part II.C.1 for the court’s thorough discussion for why no agency relationship exists between Purcell and Gonda.

1 were issued only a week before trial. Further, Jasvinder Nijjar, knowing that Purcell was Gonda's
2 son, never contacted Gonda's counsel in order to determine Purcell's correct address for proper
3 service. Because Purcell cannot be considered unavailable under Rule 804(a), the court need not
4 decide whether his deposition testimony is admissible as former testimony or statements against
5 interest.

6 4. Residual Exception under Rule 807

7 Lastly, Jasvinder Nijjar argues that, even though the deposition testimony constitutes
8 hearsay, it should nevertheless be admitted under the residual exception. A hearsay statement that
9 does not fall within an exception under Rule 803 or 804 but has the equivalent circumstantial
10 guarantees of trustworthiness may be admissible.³ FED. R. EVID. 807. However, the residual
11 exception is designed for exceptional circumstances and provides the court with a fair degree of
12 discretion whether to admit statements that would otherwise be hearsay. *See Bonds*, 608 F.3d at
13 500-01 (affirming district court's determination that residual exception did not apply because
14 declarant's refusal to testify was not exceptional circumstance).

15 Although Purcell testified in a deposition under oath, indicating the testimony's
16 trustworthiness, Jasvinder Nijjar has not provided any basis why this is an exceptional circumstance
17 in which the court should admit Purcell's statements. The simple answer is that Jasvinder Nijjar
18 ought to have timely and properly subpoenaed Purcell to obtain his testimony. Rule 807 cannot
19 substitute for a lack of diligence on this important point.

20 C. Gonda's Liability for the Misdeeds of Purcell and Mirza

21 1. Vicarious Liability under Respondeat Superior Doctrine

22 It is undisputed by the parties that Purcell and Mirza engaged in fraudulent acts that ended
23 with them receiving an improper and undisclosed commission. The issue before this court is
24 whether Gonda is liable for their misconduct. In Jasvinder Nijjar's view, this is a question of
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26 ³ Rule 807 further provides that the court must determine that "(A) the statement is
27 offered as evidence of a material fact; (B) the statement is more probative on the point for which it is
28 offered than any other evidence which the proponent can procure through reasonable efforts; and (C)
the general purposes of these rules and the interests of justice will best be served by admission of the
statement into evidence."

1 agency. It is important to note that Gonda's participation in the transaction was limited to her name
2 appearing on a form used by Purcell.

3 An agent is one who represents or acts on behalf of a principal in dealings with third parties.
4 CAL. CIV. CODE § 2295 (1985); RESTATEMENT (THIRD) OF AGENCY § 1.01 (2006). Under
5 traditional agency principles of respondeat superior, a principal can be held vicariously liable to a
6 third party for its agent's torts committed within the scope of the agency relationship. *See* CAL. CIV.
7 CODE § 2338; RESTATEMENT (THIRD) OF AGENCY § 2.04. To determine if Gonda is vicariously
8 liable to Jasvinder Nijjar, the court must first decide whether there was ever an agency relationship
9 between Mirza or Purcell, as agents, and Gonda, as their principal.

10 An agency relationship may be created by a precedent authorization or subsequent
11 ratification. CAL. CIV. CODE § 2307; *see also* RESTATEMENT (THIRD) OF AGENCY §§ 3.01, 4.01.
12 Under California law, the existence of an agency relationship is generally a question of fact. *In re*
13 *Nelson*, 761 F.2d 1320, 1322 (9th Cir. 1985); *Brokaw v. Black-Foxe Military Inst.*, 37 Cal. 2d 274,
14 278 (1951).

15 a. Gonda Did Not Authorize Purcell or Mirza to Act on Her Behalf

16 Agency authorization may be in the form of an express agreement. *See Naify v. Pac. Indem.*
17 *Co.*, 11 Cal. 2d 5, 12 (1938); *see also* RESTATEMENT (THIRD) OF AGENCY §§ 1.03, 2.01.
18 Alternatively, agency may be implied from the circumstances and conduct of the parties. *See*
19 *Thayer v. Pac. Elec. Ry. Co.*, 55 Cal. 2d 430, 438 (1961); *see also* RESTATEMENT (THIRD) OF
20 AGENCY §§ 1.03, 2.01.

21 The evidence shows that Gonda never authorized Purcell or Mirza, either expressly or
22 implicitly, to act either for her or for Edgewater in the transaction with the Nijjars. Purcell and
23 Mirza were never formally employed as salespeople, employees, or agents of Edgewater, and Gonda
24 never recognized them as such. No evidence of written agreements was introduced indicating a
25 formal agency relationship. Gonda was a designated broker with the right to supervise and control
26 Edgewater's salespeople and employees, but she never had the right to control Purcell and Mirza's
27 activities. The absence of this right favors finding no agency relationship. *See Tieberg v.*
28 *Unemployment Ins. Appeals Bd.*, 2 Cal. 3d 943, 950 (1970) (noting that the most significant factor in

1 determining whether there is an agency relationship is the existence of a principal's right to control
2 the agent's activities).

3 The circumstances and conduct of the parties do not support a finding that Gonda impliedly
4 authorized Mirza or Purcell to act for her. Little information is known about Mirza, even after trial.
5 Based on the transaction, Mirza either worked for or worked with Purcell in some capacity. It is
6 clear though that Mirza was never an agent of Gonda. He was unlicensed, maintained his own
7 business, and transacted on his own behalf and for his own benefit. Jasvinder Nijjar presented no
8 evidence showing that Mirza had ever acted on behalf of Gonda or Edgewater in the past.

9 The circumstances also do not establish an agency relationship between Purcell and Gonda.
10 Purcell's proximity to Gonda and Edgewater's business was due to his familial relationship with its
11 officers, his wife being the president and treasurer and his mother (Gonda) being the designated
12 broker, vice president, and secretary. To the extent that Purcell was involved in Edgewater's
13 activities, the evidence shows that Purcell's participation was informal. Nijjar presented no
14 evidence showing that Purcell acted on behalf of Edgewater in any prior real estate transactions.
15 Rather, as Gonda testified, Purcell only provided casual advice to Edgewater's salespeople, which is
16 insufficient to establish an agency relationship. *See Edwards v. Freeman*, 34 Cal. 2d 589, 591-92
17 (1949) (stating that performance of a "mere favor for another, without being subject to any legal
18 duty of service and without assenting to any right of control" cannot support finding of agency);
19 *Violette v. Shoup*, 16 Cal. App. 4th 611, 620 (1993) ("A person does not become the agent of
20 another simply by offering help or making a suggestion.").

21 The truth is Gonda had no knowledge of Purcell and Mirza's conduct. Her involvement was
22 limited to the appearance of her name and information on the front of the Purchase Agreement, but
23 this only proves that Purcell printed out and used a form with Gonda's name on it. Her information
24 appeared on the Purchase Agreement only because it was included as the default for that form. No
25 evidence was presented showing that Gonda actually participated in the transaction by signing her
26 name, listing herself as the broker, or acknowledging the transaction. Edgewater's name also does
27 not appear on the form. Because he listed his own license number, and not Gonda's, on the
28 Purchase Agreement, the court concludes that Purcell intended only to act as a broker on his own

1 behalf.

2 The only facts supporting Jasvinder Nijjar's position in finding agency authorization are that
3 Purcell's name appears on the Edgewater checks given to Jasvinder Nijjar and that Purcell himself
4 signed the second refund check. While these facts do raise some questions about Edgewater's
5 corporate practices, they are ultimately immaterial in this case because they do not establish an
6 agency relationship with Gonda. At best, assuming that Purcell did have the authority to write and
7 sign an Edgewater check, this only proves that Purcell acted as some kind of employee for
8 Edgewater. Purcell's ability to write an Edgewater check is not indicative of an agency with Gonda
9 with respect to the Nijjars' transaction.

10 Absent any evidence showing that Gonda authorized Mirza or Purcell to engage in the
11 transaction on her behalf, the court cannot find an agency relationship established by precedent
12 authorization.

13 b. Gonda Did Not Ratify Purcell or Mirza's Acts

14 Next, Jasvinder Nijjar argues that by receiving the \$33,120 commission in Edgewater's bank
15 account, Gonda ratified the transaction, accepting the benefit of Mirza and Purcell's unauthorized
16 transaction. An agency may also be created by subsequent ratification. CAL. CIV. CODE § 2307;
17 RESTATEMENT (THIRD) OF AGENCY § 4.01. "Ratification is the voluntary election by a person to
18 adopt in some manner as his own an act which was purportedly done on his behalf by another
19 person, the effect of which . . . is to treat the act as if originally authorized by him." *Rakestraw v.*
20 *Rodrigues*, 8 Cal. 3d 67, 73 (1972); *accord* RESTATEMENT (THIRD) OF AGENCY §§ 4.01, 4.02. It
21 "can be made only in the manner that would have been necessary to confer an original authority for
22 the act ratified, or where an oral authorization would suffice, by accepting or retaining the benefit of
23 the act, with notice thereof." CAL. CIV. CODE § 2310; *accord* RESTATEMENT (SECOND) OF AGENCY
24 §§ 98, 99 (1958). Although Edgewater did receive the commission, the court finds two issues with
25 the supposed ratification: (1) Mirza and Purcell never intended to act on behalf of Edgewater or
26 Gonda, only acting for their own benefit; and (2) Gonda had no knowledge about the transaction
27 when Edgewater received the funds.

i. Agent Purportedly Acting on Behalf of a Principal

“A principal cannot ratify the act of the alleged agent, unless the ‘agent’ purported to act on behalf of the principal.” *Emery v. Visa Int’l Serv. Ass’n*, 95 Cal. App. 4th 952, 961–62 (2002) (citing *Watkins v. Clemmer*, 129 Cal. App. 567, 570–71 (1933)) (finding that merchants’ use of Visa’s logo and trademark in illegal solicitations did not make them agents of Visa); *accord* RESTATEMENT (THIRD) OF AGENCY § 4.03. As discussed above, the evidence shows that Purcell and Mirza acted only on their own behalf, and not on behalf of Gonda or Edgewater. Before the close of escrow on the transaction, Edgewater or Gonda’s names were never mentioned to the Nijjars. The Nijjars never heard their names and never had reason to believe Mirza and Purcell were affiliated with any other party until after the transaction had occurred. The first page of the Purchase Agreement did show Gonda’s name and information, but, as discussed earlier, the form used had her name set as the default. When additional information was later filled in, it showed that Purcell acted on his own behalf and for his own benefit by using only his own name and his individual brokerage license number and by excluding any reference to Edgewater or Gonda. It is clear that Mirza and Purcell had no intention of representing Edgewater or Gonda in the transaction.

ii. Principal’s Knowledge of Material Facts

To be held liable for an agent’s unauthorized act, a principal must also have knowledge of the material facts involved at the time of the alleged ratification. *See Rakestraw*, 8 Cal. 3d at 74 (citing *Chastain v. Belmont*, 43 Cal. 2d 45, 58 (1954)); RESTATEMENT (THIRD) OF AGENCY § 4.06; *see also* CAL. CIV. CODE § 2314 (permitting rescission of ratification if made with imperfect knowledge of material facts). At the time Edgewater received the commission funds in its bank account, Gonda still had no knowledge of two material facts, the actual transaction itself and its potential illegality.

Although Gonda did not affirmatively act when Purcell informed her about the situation, this was not her ratification of the transaction. At that moment, there was nothing that Gonda could have done to rectify the situation. Edgewater received the \$33,120 commission, and 90% of that was paid out to Mirza (a separate transaction that Gonda also had no prior knowledge of), leaving Edgewater with only 10%, or \$3,312. Two refund checks totaling \$6,552 were already paid out to Jasvinder

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1 Nijjar, an amount greater than the 10% left for Edgewater. At the time that Gonda learned about the
2 events that transpired, Edgewater no longer retained any benefit from the transaction. Therefore,
3 Gonda's failure to act, in this particular circumstance, did not constitute her ratification of the
4 transaction.

5 In conclusion, the court finds that no agency relationship between Gonda and Purcell or
6 Mirza was established by either precedent authorization or subsequent ratification.⁴

7 2. Vicarious Liability as a Designated Broker of Record

8 Finally, Jasvinder Nijjar argues that under California law, Gonda is personally liable because
9 she is Edgewater's designated broker. The relevant statute, California Business & Professions Code
10 § 10159.2, provides that the designated broker of record

11 shall be responsible for the supervision and control of the activities conducted on
12 behalf of the corporation by its officers and employees as necessary to secure full
13 compliance with the provisions of this division, including the supervision of
salespersons licensed to the corporation in the performance of acts for which a real
estate license is required.

14 CAL. BUS. & PROF. CODE § 10159.2(a) (2008). While the statute does place a special duty on
15 designated brokers, the statute is only part of a greater regulatory scheme, subjecting a broker to
16 disciplinary action such as suspension or revocation of his or her license. *See In re Grabau*, 151
17 B.R. 227, 231–32 (N.D. Cal. 1993) (discussing § 10159.2 and how it fails to create a private cause
18 of action); *see also* CAL. BUS. & PROF. CODE § 10177(h). This case does not involve discipline.

19 Jasvinder Nijjar's argument fails to consider the Ninth Circuit's decision in *Holley v. Crank*,
20 400 F.3d 667 (9th Cir. 2005), which the court finds to be the controlling authority on the issue.
21 Essentially, Jasvinder Nijjar argues that Gonda, as designated broker, automatically steps into the
22 shoes of Edgewater, so that if Edgewater were vicariously liable for Purcell or Mirza's tortious acts,
23 Gonda would be as well. That is not necessarily true. Rather, *Holley* provides that § 10159.2 may
24 impose vicarious liability on a designated broker only if there was an agency relationship between
25 the broker and the tortfeasor-employee. 400 F.3d at 671, 673–74; *see also Nevis v. Wells Fargo*
26 *Bank*, No. C 07-02568 MHP, 2009 WL 1458042, at *4 (N.D. Cal. May 26, 2009) (requiring a

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28 ⁴ As this court finds that there was no agency relationship, there is no need to
determine whether Mirza or Purcell's misconduct was within the scope of their agency.

1 finding of an actual agency relationship between employee and designated broker to impose
2 vicarious liability). In such a situation, a principal's vicarious liability for its agent's torts will be
3 determined by traditional agency principles, not only by the principal's right or duty to control an
4 agent. *Holley*, 400 F.3d at 670–71; *see also Meyer*, 537 U.S. at 291. As discussed extensively
5 above in Part II.C.1, no such agency relationship existed between Gonda and Purcell or Mirza under
6 common law or California's agency law. Therefore, the court finds that California Business &
7 Professions Code § 10159.2 is inapplicable to Gonda, an uninvolved designated broker of record.

8 **III. CONCLUSION**

9 For the reasons identified above, Debtor Joanna Gonda's Claim Objection is sustained.
10 Claimant Jasvinder Nijjar's claim is disallowed in its entirety.

11 ****** END OF ORDER ******
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Court Service List

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